

COMMONWEALTH OF MASSACHUSETTS

Hampshire, ss.

Superior Court Department
of the Trial Court
Civil Action No. 04-161

BRADFORD C. COUNCILMAN,)	
Plaintiff)	
v.)	ASSENTED-TO MOTION TO
)	EXTEND TIME TO ANSWER
ALIBRIS, INC.,)	OR RESPOND TO COMPLAINT
MICHAEL WARCHUT,)	
PETER KROTKOV,)	
Defendants)	

With the assent of the plaintiff, Bradford C. Councilman ("Councilman"), defendants Alibris, Inc. ("Alibris") and Michael Warchut ("Warchut"), hereby move the Court to extend the time for them to answer or otherwise respond to the complaint in this action until thirty days after Councilman provides notice to Alibris and Warchut of a ruling by the United States Court of Appeals for the First Circuit in the case of *United States v. Bradford C. Councilman*, No. 03-1383. As grounds for this motion, Alibris and Warchut state as follows:

1. On or around July 11, 2001, Councilman was indicted by the federal government on two counts: (1) under 18 U.S.C. § 371, conspiracy to violate 18 U.S.C. § 2511 et seq.; and (2) under 18 U.S.C. § 371, conspiracy to violate 18 U.S.C. § 1030 et seq. Councilman commenced this action on or around July 9, 2004. Alibris and Warchut were served with the complaint on or around September 24, 2004. In summary, the complaint alleged that the defendants falsely implicated Councilman in connection with a criminal investigation by the federal government.

2. In this complaint, Councilman brought claims against the defendants of malicious prosecution (Count I) and abuse of process (Count II). In connection with these claims, Councilman alleged that prior proceedings terminated in his favor because, on June 16, 2003, the

government dismissed Count II against him and, on June 29, 2004, the First Circuit affirmed dismissal of Count I against him.

3. On October 5, 2004, the First Circuit voted to rehear en banc the matter of *United States v. Councilman*. The Court vacated the judgment entered on June 29, 2004 dismissing Count I of the indictment against Councilman.

4. Based on the First Circuit's allowance of the government's petition for rehearing en banc, Councilman has agreed that the time for Alibris and Warchut to answer or otherwise respond to the allegations in the complaint should be extended until thirty (30) days after Councilman's attorney notifies Alibris and Warchut of the First Circuit's ruling in the pending matter of *United States v. Councilman*, No. 03-1383.

5. Alibris and Warchut will report to the Court on the status of this matter when the First Circuit issues its ruling in *United States v. Councilman* or on April 1, 2005, whichever is earlier.

6. For the foregoing reasons, defendants Alibris and Warchut respectfully request that this motion be granted and that the time for them to answer or otherwise respond to Councilman's complaint be extended to thirty days after Alibris and Warchut receive notice from

Councilman's attorney of a ruling by the First Circuit on whether the indictment against Councilman will be dismissed.

Assented to:

The Plaintiff,
BRADFORD C. COUNCILMAN
By His Attorneys:

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Respectfully submitted,

The Defendant,
ALIBRIS, INC.
By Its Attorney:

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Dated: October 12, 2004

Certificate of Service

I hereby certify that a true copy of the above document was served upon the attorney of record for each party by mail on October 12, 2004.

Katherine A. Robertson
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